

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
VITOLI MOURZAKHANOV,

JUDGE KAPLAN

Plaintiff,

NOTICE OF REMOVAL

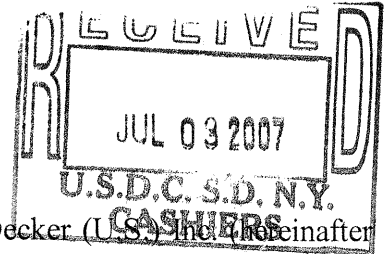
-against-

**07 CIV 6205**  
Civil Action No.:

DEWALT INDUSTRIAL TOOL CO.,  
DEWALT CONSTRUCTION TOOLS and  
BLACK AND DECKER (U.S.) INC.,

Bronx County Supreme Court  
Index No.: 16278-07

Defendants.  
-----X



**PLEASE TAKE NOTICE THAT,** defendant, Black & Decker (U.S.) Inc. hereinafter

“Black & Decker”), for itself and those entities incorrectly sued herein as DeWalt Industrial Tool Co. and DeWalt Construction Tools, through their attorneys, Calinoff & Katz LLP, hereby give notice of the removal of the above captioned action from the Supreme Court of the State of New York, County of Bronx, to the United States District Court for the Southern District of New York and state as follows:

**Grounds of removal**

1. This Court has original jurisdiction of this action under 28 U.S.C. §1332, and this action is therefore removable under 28 U.S.C. §1441 and §1446, in that as set forth further below, it is a civil action where the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interests and costs, and is between citizens of different states.

### **State Proceedings**

2. Plaintiffs commenced this action in the Supreme Court of the State of New York for the County of Bronx under the caption Vitoli Mourzakhanov vs. DeWalt Industrial Tool Co., DeWalt Construction Tools, and Black and Decker (U.S.) Inc., with an Index No. 16278/07.

3. Upon information and belief, the plaintiff filed a summons and complaint with the Supreme Court of the State of New York, County of Bronx on June 13, 2007. (See annexed Exhibit "A").

4. Defendants Black & Decker were served via the Secretary of State on June 22, 2007, (See Affidavit of Service annexed hereto as Exhibit "B").

### **Nature of this Action**

5. The complaint alleges causes of action sounding in negligence, products liability, strict liability, with regard to a power saw, allegedly manufactured by Black & Decker.

### **Timeliness of Removal**

6. This notice of removal was timely filed within thirty (30) days of receipt of the initial pleading setting forth plaintiff's claims for relief. Specifically, defendants Black & Decker were served via the Secretary of State on June 22, 2007. Accordingly, the instant notice of removal has been filed within thirty (30) days of receipt of the initial pleading, indicating that this Court had jurisdiction.

### **Diversity of Citizenship**

7. Plaintiff, is, and at all relevant times, has been a citizen of the State of New York, residing, upon information and belief in Kings County.

8. DeWalt Industrial Tool Co. is not a legal entity entitled to sue or be sued but rather a trade name used by defendant Black & Decker (U.S.) Inc. a Maryland corporation, with its principal place of business at 701 East Joppa Road, Towson, Maryland 21286.

9. DeWalt Construction Tools is not a legal entity entitled to sue or be sued but rather a trade name used by defendant Black & Decker (U.S.) Inc., a Maryland corporation, with its principal place of business at 701 East Joppa Road, Towson, Maryland 21286.

10. Black & Decker (U.S.) Inc. is a Maryland corporation, with its principal place of business at 701 East Joppa Road, Towson, Maryland 21286.

11. The alleged accident that is the basis of plaintiffs' complaint is alleged to have occurred at 1225 Morrison Avenue, Bronx, New York 10471.

### **Amount in Controversy**

12. The plaintiff demands the sum of \$5,000,000.00, exclusive of interests and costs. Hence, because the parties are diverse and the amount in controversy exceeds \$75,000.00, this action is within the federal court's diversity jurisdiction.

**Consent**

13. Since the Black & Decker defendants have been the only defendants served in this action, there are no other defendants to grant consent. Thus, obtaining consent in this action is not applicable.


**WHEREFORE**, Black & Decker respectfully requests that this civil action be removed from the Supreme Court of the State of New York, County of Bronx, to the United States District Court for the Southern District of New York, and henceforth, that this action be placed on the docket of this Court for further proceedings, the same as though this action had originally instituted in this Court.

Dated: New York, New York  
July 3, 2007

Yours, etc.,

CALINOFF & KATZ LLP

BY:



Robert A. Calinoff  
Attorneys for Defendants  
DEWALT INDUSTRIAL TOOL CO.,  
DEWALT CONSTRUCTION TOOLS  
and BLACK & DECKER (U.S.) INC.  
140 East 45<sup>th</sup> Street  
17<sup>th</sup> Floor  
New York, New York 10017  
(212) 826-8800

TO:

John E. Durst, Jr.  
THE DURST LAW FIRM, P.C.  
Attorneys for Plaintiff  
319 Broadway  
New York, New York 10007  
(212) 964-1000

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

VITOLI MOURZAKHANOV,

Plaintiff,

-against-

DEWALT INDUSTRIAL TOOL CO.,  
DEWALT CONSTRUCTION TOOLS, and  
BLACK AND DECKER (U.S.) INC.,

Defendants.

DEWALT INDUSTRIAL TOOL CO.  
1646 Sulphur Spring Road  
Baltimore, Maryland 21227  
c/o C T Corporation System  
111 Eighth Avenue  
New York, New York 10011

DEWALT CONSTRUCTION TOOLS  
1646 Sulphur Spring Road  
Baltimore, Maryland 21227  
c/o C T Corporation System  
111 Eighth Avenue  
New York, New York 10011

BLACK AND DECKER (U.S.) INC.  
701 East Joppa Road, TW266  
Towson, Maryland 21286  
c/o C T Corporation System  
111 Eighth Avenue  
New York, New York 10011

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the Plaintiffs' attorney within 30 days after the service of this summons, exclusive of the date of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: June 7, 2007

Respectfully submitted,

John E. Durst, Jr.

THE DURST LAW FIRM, P.C.  
Attorney for Plaintiffs  
319 Broadway  
New York, New York 10007  
(212) 964-1000

SUMMONS

Index #:

16278-07

AC

2007 JUN 13 PM 1:23

DEWALT

**CT CORPORATION**

A WoltersKluwer Company

**Service of Process  
Transmittal**

06/22/2007

Log Number 512339797

**TO:** GARY C DUVAL  
Miles & Stockbridge  
1 West Pennsylvania Avenue, Suite 900  
Towson, MD, 21204

**RE:** Process Served in New York

**FOR:** Black & Decker (U.S.) Inc. (Domestic State: MD)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Vitoli Mourzakhanov, Pltf. vs. Dewalt Industrial Tool Co., et al. including Black and Decker (U.S.) Inc., Dfts.

**DOCUMENT(S) SERVED:** Summons, Verified Complaint, Verification

**COURT/AGENCY:** Bronx County: Supreme Court, NY  
Case # 16278-07

**NATURE OF ACTION:** Product Liability Litigation - Manufacturing Defect - Dewalt power saw - Personal injuries - On 9/29/05 - Seeking \$10,000,000.00

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, New York, NY

**DATE AND HOUR OF SERVICE:** By Process Server on 06/22/2007 at 14:00

**APPEARANCE OR ANSWER DUE:** Within 30 days after the service, exclusive of the day of service

**ATTORNEY(S) / SENDER(S):** John E. Durst, Jr.  
The Durst Law Firm, P.C.  
319 Broadway  
New York, NY, 10007  
(212) 964-1000

**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex 2 Day, 790768285751  
Email Notification, Siobhan Miller Siobhan.Miller@bdk.com

**SIGNED:** C T Corporation System  
**PER:** Christopher Tilton  
**ADDRESS:** 111 Eighth Avenue  
New York, NY, 10011  
**TELEPHONE:** 212-894-8940

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Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of the package only, not of its contents.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

VITOLI MOURZAKHANOV,

SUMMONS

Index #: 160778-07

Plaintiff

**AC**

- against -

DEWALT INDUSTRIAL TOOL CO.,  
DEWALT CONSTRUCTION TOOLS, and  
BLACK AND DECKER (U.S.) INC.,

Defendants.

DEWALT INDUSTRIAL TOOL CO.  
1646 Sulphur Spring Road  
Baltimore, Maryland 21227  
c/o C T Corporation System  
111 Eighth Avenue  
New York, New York 10011

DEWALT CONSTRUCTION TOOLS  
1646 Sulphur Spring Road  
Baltimore, Maryland 21227  
c/o C T Corporation System  
111 Eighth Avenue  
New York, New York 10011

BLACK AND DECKER (U.S.) INC.  
701 East Joppa Road, TW266  
Towson, Maryland 21286

c/o C T Corporation System  
111 Eighth Avenue  
New York, New York 10011

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the Plaintiffs' attorney within 30 days after the service of this summons, exclusive of the date of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: June 7, 2007

Respectfully submitted,

John E. Durst, Jr.

THE DURST LAW FIRM, P.C.  
Attorney for Plaintiffs  
319 Broadway  
New York, New York 10007  
(212) 964-1000

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X  
VITOLI MOURZAKHANOV,

Plaintiff,

VERIFIED COMPLAINT

INDEX # 16278/07

against -

DEWALT INDUSTRIAL TOOL CO.,  
DEWALT CONSTRUCTION TOOLS and  
BLACK AND DECKER (U.S.) INC.

Defendants.

-----X

Plaintiff, by THE DURST LAW FIRM, P.C., alleges the  
following upon information and belief:

A FIRST CAUSE OF ACTION  
FOR NEGLIGENCE

1. At all times hereinafter mentioned, the plaintiff was a resident of Brooklyn, New York.
2. At all times hereinafter mentioned, the defendant DEWALT INDUSTRIAL TOOL CO. was a domestic corporation, incorporated under the laws of the State of New York.
3. At all times hereinafter mentioned, the defendant DEWALT INDUSTRIAL TOOL CO. was authorized to do business in the State of New York.
4. At all times hereinafter mentioned, the defendant DEWALT CONSTRUCTION TOOLS was a domestic corporation, incorporated under the laws of the State of New York.



5. At all times hereinafter mentioned, the defendant DEWALT CONSTRUCTION TOOLS was authorized to do business in the State of New York.

1. At all times hereinafter mentioned, the defendant BLACK AND DECKER (U.S.) INC. was a domestic corporation, incorporated under the laws of the State of New York.

2. At all times hereinafter mentioned, the defendant BLACK AND DECKER (U.S.) INC. was authorized to do business in the State of New York.

3. On or about 9/29/05, the plaintiff VITOLI MOIRZAKHANOV, was injured at 1225 Morrison Avenue, Bronx, NY 10471.

4. The plaintiff was injured as a result of the defective and dangerous condition of a DEWALT power saw.

5. Said product was designed by the defendant DEWALT INDUSTRIAL TOOL CO. at a date prior to the accident.

6. Said product was manufactured by the defendant DEWALT INDUSTRIAL TOOL CO. at a date prior to the accident.

7. Said product was installed by the defendant DEWALT INDUSTRIAL TOOL CO. at a date prior to the accident.

8. Said product was sold by the defendant DEWALT INDUSTRIAL TOOL CO., at a date prior to the accident, to another.

9. Said product was maintained and/or repaired by the defendant DEWALT INDUSTRIAL TOOL CO. at a date prior to the accident.

10. Said product was modified and/or altered by the defendant DEWALT INDUSTRIAL TOOL CO. at a date prior to the accident.

11. Said product was designed by the defendant DEWALT CONSTRUCTION TOOLS at a date prior to the accident.

12. Said product was manufactured by the defendant DEWALT CONSTRUCTION TOOLS at a date prior to the accident.

13. Said product was installed by the defendant DEWALT CONSTRUCTION TOOLS at a date prior to the accident.

14. Said product was sold by the defendant DEWALT CONSTRUCTION TOOLS at a date prior to the accident, to another.

15. Said product was maintained and/or repaired by the defendant DEWALT CONSTRUCTION TOOLS at a date prior to the accident.

16. Said product was modified and/or altered by the defendant DEWALT CONSTRUCTION TOOLS at a date prior to the accident.

17. Said product was designed by the defendant BLACK AND DECKER (U.S.) INC., at a date prior to the accident.

18. Said product was manufactured by the defendant BLACK AND DECKER (U.S.) INC., at a date prior to the accident.

19. Said product was installed by the defendant BLACK AND DECKER (U.S.) INC., at a date prior to the accident.

20. Said product was sold by the defendant BLACK AND DECKER (U.S.) INC., at a date prior to the accident, to another.

21. Said product was maintained and/or repaired by the defendant BLACK AND DECKER (U.S.) INC., at a date prior to the accident.

22. Said product was modified and/or altered by the defendant BLACK AND DECKER (U.S.) INC., at a date prior to the accident.

23. Said product was negligently and carelessly designed.

24. Said product was negligently and carelessly manufactured.

25. Said product was negligently and carelessly installed.

26. Said product was negligently and carelessly sold.

27. Said product was negligently and carelessly maintained and repaired.

28. Said product was negligently and carelessly modified and altered.

29. Said product contained defects and dangers.

30. The defendants knew or should have known that said product was in a defective, dangerous condition.

31. The defendants failed to disclose knowledge of the defective and dangerous condition of the product to others to whom a duty was owed to do so.

32. As a result of the aforesaid condition of said product, the plaintiff VITOLT MOURZARHANOV, suffered a serious and permanent injury.

33. As a result of the foregoing, the plaintiff has suffered compensatory and exemplary damages in the amount of FIVE MILLION DOLLARS (\$5,000,000.00).

**A SECOND CAUSE OF ACTION  
FOR STRICT PRODUCTS LIABILITY**

34. Plaintiff repeats and reiterates each paragraph of the First Cause of Action, as if fully stated herein.

35. As a result of the foregoing, the defendant is liable to the plaintiff VITOLT MOURZAKHANOV, under the doctrine of strict products liability, for defective design, manufacturing, and warnings.

36. As a result of the foregoing, the plaintiff has suffered compensatory and exemplary damages in the amount of FIVE MILLION DOLLARS (\$5,000,000.00).

WHEREFORE, the Plaintiff VITOLI MOURZAKHIANOV, demands compensatory and exemplary damages in the First Cause of Action in the amount of FIVE MILLION DOLLARS (\$5,000,000.00), and in the Second Cause of Action in the amount of FIVE MILLION DOLLARS (\$5,000,000.00); together with the costs of this action.

THE DURST LAW FIRM, P.C.  
Attorneys for plaintiff  
319 Broadway  
New York, New York 10007  
(212) 964-1000

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----  
VITOLI MOURZAKHIANOV,

Plaintiff,

-against-

DEWALT INDUSTRIAL TOOL CO.,  
DEWALT CONSTRUCTION TOOLS, and  
BLACK AND DECKER (U.S.) INC.,

Defendants.  
-----

X ATTORNEY VERIFICATION

Index #:

16278/07

John E. Durst, Jr., an attorney admitted to practice in the State of New York, hereby affirms pursuant to CPLR 2106:

I am a shareholder in THE DURST LAW FIRM, P.C., attorneys of record for the Plaintiff. I have read the annexed Verified Complaint, know the contents thereof, and the same are true to my knowledge, except those matters which are stated to be alleged on information and belief, and as to those matters I believe them to be true. Such belief is based upon review of the file, consultation with the plaintiff, and investigation. The reason I make this affirmation instead of the plaintiff is that the plaintiff resides in a county other than the county in which their attorneys has their office.

Dated: New York, New York  
June 7, 2007

  
John E. Durst, Jr.

**CT CORPORATION**

A WaltersKluwer Company

**Service of Process  
Transmittal**

06/22/2007

Log Number 512339779

**TO:** GARY C DUVAL  
Miles & Stockbridge  
1 West Pennsylvania Avenue, Suite 900  
Towson, MD, 21204

**RE:** Process Served in New York

**FOR:** DeWalt Industrial Tool Co. (Assumed Name) (Domestic State: MD)  
Black & Decker (U.S.) Inc. (True Name)

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**APPEARANCE OR ANSWER DUE:** Within 30 days after the service, exclusive of the day of service

**ATTORNEY(S) / SENDER(S):** John E. Durst, Jr.  
The Durst Law Firm, P.C.  
319 Broadway  
New York, NY, 10007  
(212) 964-1000

**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex 2 Day, 790768285751  
Email Notification, Siobhan Miller Siobhan.Miller@bdk.com

**SIGNED:** C T Corporation System

**PER:** Christopher Tilton

**ADDRESS:** 111 Eighth Avenue  
New York, NY, 10011

**TELEPHONE:** 212-894-8840

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